duce a clear and present danger of a serious substantive evil that rises far above *public inconvenience, annoyance, or unrest," Terminiello v. City of Chicago,* 337 U.S. 1, 69 S.Ct. 894.

The statutory language, again as construed by the Court of Criminal Appeals of Texas, is also "void for vagueness." Even if "men of common intelligence" could agree on what amounts to "loud and vociferous language" by using definitions adopted from Webster (Appendix, pp. 19-20), still they must necessarily guess at and differ as to when same becomes "calculated to disturb the peace and tranquility of . . . persons in a public place" (Jurisdictional Statement, p. 6). Clearly this language is "a general and indefinite characterization" and leaves "to the executive and judicial branches too wide a discretion in its application," *Cantwell v. Connecticut, supra; Ashton v. Kentucky,* 384 U.S. 195, 200, 86 S.Ct. 1407 (1966); *Carmichael v. Allen,* 267 F.Supp. 985, 998-999 (N.D. Ga., 1966); *Baker v. Bindner,* 274 F.Supp. 658, 662-663 (W.D. Ky., 1967).

Thus the statute fails to meet the test of standards laid by decisions of the Supreme Court regarding "over-breadth" and "void for vagueness." Significantly, appellants can not—at least they do not—cite a single case that upholds their theory for overturning opinion and judgment of the district court. This dearth of support for appellants' position is a clear indication that not only is the district court correct in its opinion and judgment but also that there can be little or no argument about it.

Moreover, for reasons given and rationale explicated by the district court (Appendix pp. 4-9) the matter is far from moot. Even after particular charges of disturbing the peace were dismissed, appellees' prayer for

declaratory judgment and injunctive relief against future enforcement of Article 474 remained for determination. In the posture of this cause, as stated in *McGrath v. Kristensen,* 340 U.S. 162, 71 S.Ct. 224, 228 (1950), "The judgment sought in this proceeding would be binding and conclusive on the parties if entered and the question is justiciable."

Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116 (1965) is ample authority for a holding that appellees are "entitled . . . to injunctive relief against the enforcement of Article 474 as now worded," (Appendix, p. 13) upon facts found from overwhelming evidence of the "chilling effect" upon the exercise of First Amendment rights derived from appellants' acts and conduct relative to enforcement of the statute (Appendix, p. 8). This on that branch of *Dombrowski* sustaining challenges to state statutes "as overly broad and vague regulations of expression," 380 U.S. at 490-492; 85 S.Ct. at 1123-1124, which is the extent of the findings and conclusions of the district court below. Accordingly, appellants' reliance on *Cameron v. Johnson,* 390 U.S. 611, 88 S.Ct. 1335 and cases following it,* is misplaced.

Cameron v. Johnson, supra, returned to the Supreme Court after initial application of the absention doctrine prompting dismissal of the complaint had been vacated. 381 U.S. 741, 85 S.Ct. 1751, and remanded for reconsideration in light of *Dombrowski.* Upon remand, the district court first rendered declaratory judgment that the statute in question was not void on its face and then further found that sufficient irreparable injury to justify injunctive relief under the second branch of

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Zwicker v. Boll, 88 S.Ct. 1666 (1968) and *Brooks v. Briley,* 88 S.Ct. 1671 (1968), in both which the district court abstained from determining constitutionality of challenged laws.

Dombrowski had not been shown. Agreeing on both counts, the Supreme Court affirmed. However, in the instant case the district court rendered declaratory judgment that the statute in question *is* void on its face;[7] it did *not* decide whether the statute was being applied "for the purpose of discouraging protected activities."[8] Therefore, *Cameron v. Johnson* is plainly distinguishable and does not control entitlement to injunction in this case.

CONCLUSION

All the district court really did was to hold that Texas may not undertake to "preserve law and order" by imposing an ancient, archaic, dangerously broad and loosely drawn statute upon three of its citizens or others who do no more than exercise peaceably their First Amendment rights until set upon by others who disagree with the object of their cause. The court expressly adhered to "the right of the State of Texas to preserve law and order within its own boundaries" that appellants claim (Jurisdictional Statement, p. 9) and carefully followed precedent by referring the statute to the state legislature for corrective action (Appendix, p. 13), helpfully pointing out that such regulations "on the time, place, and manner must be reasonable and implemented by a narrowly drawn statute" (id., p. 25). Compare *Reynolds v. Sims, supra.*

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[7] A determination of appellees' prayer for declaratory judgment "independently of any request for injunctive relief against enforcement of the statute" was mandated by *Zwickler v. Koota, supra.*

[8] Though the issue of "bad faith" use of the statute was raised and, we think, adequately supported under all the facts and circumstances reflected by affidavits of appellees and others who witnessed the events.

WHEREFORE, for reasons stated judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sam Houston Clinton, Jr., a member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Motion to Affirm has been served on counsel for appellants by depositing same in the United States Mail, postage prepaid, addressed to Honorable Crawford C. Martin, Attorney General of Texas, Attn.: Howard M. Fender, Assistant Attorney General, P. O. Drawer R, Capitol Station, Austin, Texas 78711, this ____ day of July, 1968.

SAM HOUSTON CLINTON, JR.